



DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

[Docket ID FCIC-23-0007]

RIN 0563-AC84

Early Harvest Insurance Flexibility for Sugar Beets

AGENCY: Federal Crop Insurance Corporation, U.S. Department of Agriculture (USDA).

ACTION: Final rule with request for comments.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) is amending the Common Crop Insurance Regulations, Sugar Beet Crop Insurance Provisions. This rule makes the early harvest adjustment an option, providing producers with maximum flexibility to tailor their insurance policy to meet the unique risk management needs of their operation. This rule also incorporates comments to improve the early harvest adjustment that were received on a prior final rule amending the Sugar Beet Crop Insurance Provisions, published in the *Federal Register* on November 29, 2019. The changes will be effective for the 2024 and succeeding crop years for counties with a contract change date on or after November 30, 2023, and for the 2025 and succeeding crop years for counties with a contract change date prior to November 30, 2023.

DATES: *Effective date:* November 30, 2023.

Comment date: We will consider comments that we receive by the close of business [Insert date 60 days after date of publication in the *FEDERAL REGISTER*]. FCIC will consider the comments received and may conduct additional rulemaking in the future based on the comments.

ADDRESSES: We invite you to submit comments on this rule. You may submit

comments by going through the Federal eRulemaking Portal as follows:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and search for Docket ID FCIC-23-0007. Follow the instructions for submitting comments.

All comments will be posted without change and will be publicly available on www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Francie Tolle; telephone (816) 926-7829; or email francie.tolle@usda.gov. Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720-2600 (voice) or (844) 433-2774 (toll-free nationwide).

SUPPLEMENTARY INFORMATION:

Background

FCIC serves America's agricultural producers through effective, market-based risk management tools to strengthen the economic stability of agricultural producers and rural communities. FCIC is committed to increasing the availability and effectiveness of Federal crop insurance as a risk management tool. Approved Insurance Providers (AIPs) sell and service Federal crop insurance policies in every state through a public-private partnership. FCIC reinsures the AIPs who share the risks associated with catastrophic losses due to major weather events. FCIC's vision is to secure the future of agriculture by providing world class risk management tools to rural America.

Federal crop insurance policies typically consist of the Basic Provisions, the Crop Provisions, the Special Provisions, the Commodity Exchange Price Provisions, if applicable, other applicable endorsements or options, the actuarial documents for the insured agricultural commodity, the Catastrophic Risk Protection Endorsement, if applicable, and the applicable regulations published in 7 CFR chapter IV. Throughout this rule, the terms "Crop Provisions," "Special Provisions," and "policy" are used as defined in the Common Crop Insurance Policy (CCIP) Basic Provisions in 7 CFR part

457.8. Additional information and definitions related to Federal crop insurance policies are in 7 CFR 457.8.

In this rule, FCIC is making the early harvest adjustment an option and making other improvements to the early harvest adjustment in response to public comments and other input from the American Sugarbeet Growers Association (ASGA) and AIPs. The FCIC has a long history of working closely with the ASGA and AIPs in tailoring this program to the unique risk management needs of sugar beet growers.

Early Harvest Adjustment Option

For the 2019 crop year, FCIC added an early harvest adjustment to the Crop Provisions in the Common Crop Insurance Regulations; Sugar Beet Crop Insurance Provisions final rule, published in the *Federal Register* on September 10, 2018 (83 FR 45535-45539). In response to public comments, FCIC made additional changes in the Common Crop Insurance Regulations; Sugar Beet Crop Insurance Provisions final rule published in the *Federal Register* on November 29, 2019 (84 FR 65627-65639). The early harvest adjustment, as amended, was created to limit the effects to producers' Approved Production History (APH) databases from processor requirements to harvest sugar beets before they reach full maturity. Sugar beets that are harvested early are smaller in size and have a lower percent of sugar than beets harvested at full maturity, resulting in a lower net weight in the producer's APH database for that year. The lower yield remains in the producer's APH database for a minimum of 10 years, reducing their future potential insurance guarantee.

Prior to this rule, the early harvest adjustment applied if the threshold in the Special Provisions was exceeded. For those acres harvested early, the producer's yield in their APH database was automatically adjusted upwards by one percent per day covering the time until the sugar beets would have reached full maturity. This adjustment was

intended to protect their future guarantee.

With the publication of the 2019 final rule, concerns were raised during the public comment period by ASGA that the early harvest adjustment could affect a producer's claim or possible claim in the event of an insurable cause of loss. For example, if some acres were early harvested and the yield was adjusted upwards, but the producer subsequently had an insured cause of loss that reduced their yield, the upward early harvest adjustment could have an offsetting effect on the claim for indemnity.

ASGA requested that the early harvest adjustment be made an optional feature of the Crop Provisions. Making the early harvest adjustment optional will allow producers greater flexibility and limit the possible negative impacts to a producer's APH due to technological yield improvements.

In this rule, FCIS is making the early harvest adjustment optional, which allows producers to opt-in to the early harvest adjustment. Producers choosing this option will be required to select the option by the sales closing date. The producer will be able to choose which years from their APH database to apply the early harvest adjustment for production that was harvested early. The producer's premium will reflect the additional coverage between the adjusted yields and actual yields selected by the producer. The producer may have a higher approved yield and insurance coverage when an actual yield is adjusted in an APH database. If adjusting a yield will result in an increased approved yield, a higher insurance guarantee and greater indemnity payment could occur due to the early harvest adjustment. The producer will pay a higher premium for the increase in coverage. For example, a producer with a 65 percent coverage level may get a yield guarantee equivalent to a higher coverage level, such as 70 percent. Because of the early harvest adjustment option, the premium charged will reflect the higher effective coverage level (70 percent for this example) and higher risk of loss. If a producer elects the early harvest adjustment option, their premium will be adjusted while other producers who did

not elect the option will not pay additional premium. It will be the AIP's responsibility to ensure that the approved yield is calculated correctly, which determines the appropriate premium amount.

In making the early harvest adjustment an option, all producers will be required to recertify their APH database with their AIP to remove those yields from their database from the years that the adjustment was automatically applied. This will ensure that only those producers who elect the option going forward, will be charged the additional premium associated with the adjusted yields.

To elect the early harvest adjustment option, producers must choose the option by the sales closing date and must have additional coverage (that is, not a Catastrophic Risk Protection Endorsement). The option will remain in effect for future years, unless cancelled. On or before the production reporting date, the producer can replace actual yields with early harvested adjusted yields. The adjustment will only be made if a threshold of at least 15 percent of the insured acreage in the unit is early harvested, unless the Special Provisions specify a different threshold. The adjustment will not be made if the sugar beets are damaged by an insurable cause of loss and leaving the crop in the field would reduce production.

During the decision-making process for this rule, FCIC was committed to reaching a desirable outcome for all program stakeholders. FCIC regularly communicated with ASGA, on behalf of their grower constituency, and AIPs to gain consensus on the framework of the proposed changes and overcome challenges and points of disagreement.

AIPs expressed concerns regarding additional administrative burdens on producers who will be required to recertify their APH databases. FCIC worked closely with ASGA to confirm, on behalf of their producer constituency, their support for these changes, including the requirement for producers to recertify their APH databases to

implement these requested changes.

Additionally, ASGA requested to exclude the adjustments to early harvested productions on acreage with a claim. However, as identified by AIPs, due to the discretion producers have in choosing which acreage to early harvest, waiving adjustments on acreage with a claim would have introduced unwanted moral hazard in the program. FCIC believes it has landed on common, middle ground, as these choices give the producer maximum flexibility to tailor their insurance to their operation, while maintaining the actuarial soundness of the Federal crop insurance program.

Early Harvest Adjustment Cap

Following the comment period for the 2019 final rule, AIPs raised additional concerns, on behalf of their insured producers, with the limits (commonly referred to as a “cap”) on the early harvest adjustment. The cap is the maximum amount a particular actual yield can be adjusted to. The early harvest adjustment was capped at the higher of the approved yield (the average of all yields in an APH database and the basis for which the unit guarantee is calculated) or the actual yield of the production harvested after full maturity from the unit. Due to improvements in sugar beet technology, yield potential has increased, and it is possible that a producer’s early harvested actual yield exceeds the limit even before the adjustment was applied. In these cases, the actual yield was capped at the approved yield even though the actual yield was higher than the approved yield.

In this rule, FCIC is modifying the limits to the early harvest adjustment to account for situations where early harvested actual yields would have surpassed the previous cap. The changes address the cases where the actual early harvest yield prior to the early harvest adjustment exceeds the approved yield. The cap was intended to ensure adjustments don’t exceed realistic yields; it was never the intent of the cap to reduce an actual yield.

Clarifications and Grammatical Corrections

In this rule, FCIC is capitalizing “Crop Provisions” in two places to be consistent with the CCIP Basic Provisions. In section 17, FCIC is clarifying that the Stage Removal Option is only available if provided in the actuarial documents.

Effective Date, Notice and Comment, and Exemptions

The Administrative Procedure Act (APA, 5 U.S.C. 553) provides that the notice and comment and 30-day delay in the effective date provisions do not apply when the rule involves specified actions, including matters relating to contracts. This rule governs contracts for crop insurance policies and therefore falls within that exemption.

This rule is exempt from the regulatory analysis requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996. The requirements for the regulatory flexibility analysis in 5 U.S.C. 603 and 604 are specifically tied to the requirement for a proposed rule under 5 U.S.C. 553 or any other law; in addition, the definition of rule in 5 U.S.C. 601 is tied to the publication of a proposed rule.

For major rules, the Congressional Review Act requires a delay of the effective date of 60 days after publication to allow for Congressional review. This rule is not a major rule under the Congressional Review Act, as defined by 5 U.S.C. 804(2). Therefore, this final rule is effective on November 30, 2023. Although not required by APA or any other law, FCIC has chosen to request comments on this rule.

Executive Orders 12866 and 13563

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and

benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The requirements in Executive Orders 12866 and 13563 for the analysis of costs and benefits apply to rules that are determined to be significant or economically significant.

The Office of Management and Budget (OMB) has designated this rule as not significant under Executive Order 12866, “Regulatory Planning and Review,” and therefore, OMB has not reviewed this rule and analysis of the costs and benefits is not required under either Executive Order 12866 or 13563.

Clarity of the Regulation

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on this rule, we invite your comments on how to make the rule easier to understand. For example:

- Are the requirements in the rule clearly stated? Are the scope and intent of the rule clear?
- Does the rule contain technical language or jargon that is not clear?
- Is the material logically organized?
- Would changing the grouping or order of sections or adding headings make the rule easier to understand?
- Could we improve clarity by adding tables, lists, or diagrams?
- Would more, but shorter, sections be better? Are there specific sections that are too long or confusing?
- What else could we do to make the rule easier to understand?

Environmental Review

The environmental impacts of this final rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR

parts 1500–1508), and because USDA will be making the payments to producers, the USDA regulation for compliance with NEPA (7 CFR part 1b). As specified in 7 CFR 1b.4(b)(4), FCIC is categorically excluded from the preparation of an Environmental Analysis or Environmental Impact Statement unless the FCIC Manager (agency head) determines that an action may have a significant environmental effect. The FCIC Manager has determined this rule will not have a significant environmental effect. Therefore, FCIC will not prepare an environmental assessment or environmental impact statement for this action and this rule serves as documentation of the programmatic environmental compliance decision.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. Before any judicial actions may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR part 11 are to be exhausted.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

The Risk Management Agency (RMA) has assessed the impact of this rule on Indian Tribes and determined that this rule does not, to our knowledge, have Tribal

implications that require Tribal consultation under Executive Order 13175. The regulation changes do not have Tribal implications that preempt Tribal law and are not expected have a substantial direct effect on one or more Indian Tribes. If a Tribe requests consultation, RMA will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified in this rule are not expressly mandated by Congress.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104-4) requires Federal agencies to assess the effects of their regulatory actions of State, local, and Tribal governments, or the private sector. Agencies generally must prepare a written statement, including cost benefits analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local, and Tribal governments, or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Federal Assistance Program

The title and number of the Assistance Listing,¹ to which this rule applies is No. 10.450 – Crop Insurance.

Paperwork Reduction Act of 1995

The purpose of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, subchapter I), among other things, are to minimize the paperwork burden on individuals, and to require Federal agencies to request and receive approval from the Office of

¹See <https://sam.gov/content/assistance-listings>.

Management and Budget (OMB) prior to collecting information from ten or more persons. This rule does not change the information collection approved by OMB under control numbers 0563-0053.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Individuals who require alternative means of communication for program information (for example, braille, large print, audiotope, American Sign Language, etc.) should contact the responsible Agency or the USDA TARGET Center at (202) 720-2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay Service (both voice and text telephone users can initiate this call from any telephone). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at <https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint> and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail to: U.S.

Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov.

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List of Subjects

7 CFR Part 457

Acreage allotments, Crop insurance, Reporting and recordkeeping requirements.

For the reasons discussed in the supplementary information, FCIC amends 7 CFR part 457, as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(o).

2. Amend § 457.109 by:

a. In the introductory paragraph, remove the words “for effective for the 2023 and succeeding crop years in states with a November 30 contract change date and for the 2024” and add the words “effective for the 2024 and succeeding crop years in states with a November 30 contract change date and for the 2025” in their place;

b. In section 1, add definitions of “Early harvest” and “Full maturity (date of)” in alphabetical order;

c. In section 8, remove the words “crop provisions” and add “Crop Provisions” in each place they appear;

d. In section 14:

i. Remove paragraph (f); and

ii. Redesignate paragraphs (g) and (h) as paragraphs (f) and (g);

e. In section 17:

i. Redesignate paragraphs (a)(1) through (4) as paragraphs (a)(2) through (5);

ii. Add new paragraph (a)(1); and

f. Add a new section 18.

The revisions and additions read as follows:

§ 457.109 Sugar Beet Crop Insurance Provisions.

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1. Definitions

* * * * *

Early harvest. Harvest of sugar beets prior to full maturity.

Full maturity (date of). The date the sugar beets would have reached full maturity is 45 days prior to the calendar date for the end of the insurance period, unless otherwise specified in the Special Provisions.

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17. Stage Removal Option

(a) * * *

(1) If provided in the actuarial documents, you may elect the Stage Removal Option.

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18. Early Harvest Adjustment Option

(a) Applicability:

(1) If provided in the actuarial documents, you may elect the Early Harvest Adjustment Option to adjust your actual yield(s) for early harvested production.

(2) You must have additional coverage to elect this option.

(3) You must elect this option in writing on or before the sales closing date.

(4) This election is continuous, in accordance with section 2 of the Basic Provisions, unless canceled by the cancellation date. Your election of the Catastrophic Risk Protection Endorsement for your sugar beets will cancel this option.

(b) Insurance Guarantees:

(1) APH database – On or before the production reporting date, you may replace actual yields with early harvest adjusted yields in your APH database, if this option is elected.

(i) The early harvest adjusted yields will be used in the same manner as actual yields for the purpose of calculating the approved yield.

(ii) Once an early harvest adjusted yield replaces an actual yield, the early harvest adjusted yield will remain in effect until such time as that crop year is no longer included in the APH database, this option is canceled in accordance with section 18(a)(4), or the insured chooses to no longer replace that actual yield(s) by the production reporting date.

(iii) If you cancel the option, the actual yield will be used in the APH database.

(2) Premium – Your approved yield will be used to determine your amount of premium owed. The premium will be increased to cover the additional risk associated with the resulting higher yields.

(3) Adjustment – The adjustment will equal an increase of your actual yield by 1 percent per day for each day the sugar beets were harvested prior to full maturity.

(4) Threshold – The adjustment will only be made if the early harvested percentage of insured acreage in the unit meets or exceeds 15 percent, unless otherwise specified in the Special Provisions.

(5) Cap – The adjustment cannot result in a yield greater than the higher of:

(i) Your approved yield from the unit;

(ii) The actual yield of the acreage harvested after full maturity from the unit;

or

(iii) The unadjusted actual yield of the early harvested acreage from the unit.

(6) Processor requirement – The adjustment will only be made if:

(i) Early harvest is required in the production agreement; or

(ii) The processor requests early harvest.

(c) Settlement of Claim – If this option is elected, production to count from the unit will be determined by:

(1) The adjustment will be made for any early harvested production if the threshold is exceeded for the unit.

(2) The adjustment will not be made if the sugar beets are damaged by an insurable cause of loss and leaving the crop in the field would reduce production.

(3) If the production agreement does not require early harvest and the processor has not requested early harvest, and the processor:

(i) Accepts the early harvested production, the early harvested production will be counted but no adjustment will apply.

(ii) Does not accept the early harvested production, the production to count will be the production guarantee for the acreage harvested early.

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Manager,
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